

**[Advisory Opinion 1992-10]**  
ADVISORY OPINION 92-35

The Ethics Commission has reviewed your request for advice concerning whether or not serving on the board of directors of the Montgomery County Human Services Foundation, Inc. (Foundation) would violate the Montgomery County Public Ethics Law. The Commission understands the factual background of your request to be as follows:

The Department Heads for the Department of Family Resources (DFR), the Department of Addiction, Victim, and Mental Health Services (DAVMHS), the Department of Health (DH), and the Department of Social Services (DSS) have formed the Foundation, a non-profit, non-stock Maryland corporation. The Foundation is organized, according to its Articles of Incorporation, for the exclusive purpose of “supporting and benefiting the Health and Human Services Secretariat under the auspices of Montgomery County Government’s Department of Family Resources. The corporation will serve as an intermediary agency for the County Government to facilitate the brokering, contracting, delivering and payment of services associated with program initiatives that support and preserve the integrity of the family.” In particular, the Foundation is intended to assist the County in implementing the State System Reform program. The Foundation is intended to provide families with health care and other support necessary for the preservation of the family unit.

The by-laws of the Foundation will provide that the Board of Directors must include the Department Heads of DFR, DAVMHS, DH and DSS. The by-laws will also provide that these four Directors will be appointed by the County Executive to represent the public interest. Finally, under the by-laws, Foundation Directors will not be entitled to receive any compensation.

It is anticipated that the Foundation will enter into a non-competitive contract with the County under Section 11B-42 to provide services for the System Reform program.<sup>1</sup> The contractor or contractors will be administered by DFR, DAVMHS, DH, and/or DSS. As the head of one of these departments, you have asked if serving as a member of the Board of Directors of the Foundation and administering a contract with the Foundation on behalf of the County constitutes a conflict of interest under the Montgomery County Public Ethics Law.

Section 19A-11(a)(2)(A) prohibits a public employee from participating in a matter if the public employee knows that a party to the matter is a business in which the public employee holds office as a director or trustee. Section 19A-4(b) provides that the term business, as used in the ethics law, includes a non-profit enterprise including a corporation, trust, or foundation. Section 19A-11(b)(4), however, provides that the prohibition against an employee participating in a matter involving an entity in which the employee holds an office does not apply if the County Executive appoints the public employee to serve as an officer or director of that business to represent the public interest.

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<sup>1</sup> Unless otherwise indicated, section references are to the Montgomery County Code (1984).

Since you would be appointed to the Board of Directors of the Foundation by the County Executive to represent the public interest, the Commission finds that you may participate in administering a contract with the Foundation without violating Section 19A-11(a)(2)(A).<sup>2</sup>

The Commission trusts you will find this advice responsive to your inquiry. If you have further questions, please contact the Commission.

Date of Issue: 12/14/92

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<sup>2</sup> As a precaution, the Ethics Commission would like to remind you that Section 19A-15(a) prohibits a public employee from disclosing confidential information for the gain of another. The exemption created by Section 19A-11(b)(4) does not apply to Section 19A-15. Accordingly, you must be careful to avoid sharing with the Foundation confidential information you may acquire as a public employee.